

# THE REMEDIAL SECTION

## General Information:

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**Description:** The primary goals of the Remedial Section are to protect and preserve one of the most important natural resources of our state - our water supply, both ground water and surface water and to protect the human health and welfare of the citizens of Kansas, both current and future generations, from environmental contamination.

The Remedial Section accomplishes these primary goals through various types of cleanup programs by working in a cooperative partnership with the public, industry, and local government. The programs within the Section are responsible for the successful remediation of hundreds of environmentally contaminated properties and the provision of safe drinking water to citizens and communities with contaminated water supplies in Kansas. The programs within the Remedial Section include the assessment, investigation, cleanup, and monitoring of state-lead contaminated sites, voluntary sites, orphan sites, brownfields sites, and state-lead federal Superfund sites throughout Kansas.

## Programs:

- **Voluntary Cleanup and Property Redevelopment Program**

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### Description:

- **Authority** – Program enacted in July 1997 (Kansas Statutes Annotated 65-34,161 through 65-34,174). Regulations adopted June 26, 1998 (Kansas Administrative Regulations 28-71-1 through 28-71-12).
- **Funding** – Fees are established by the statute and paid by the applicant to the program. Program applications must be submitted with \$200 nonrefundable application fee; an initial deposit, not to exceed \$5,000, is required to cover KDHE's oversight costs including the cost of labor associated with review of documents, studies and test results, collection of split samples, laboratory analysis, and other costs.

- **Purpose** – To promote the transfer, redevelopment, and reuse of contaminated properties and protect public health and the environment. Provides a mechanism for property owners, facility operators, prospective purchasers, and local governments to voluntarily address contaminated properties with technical and regulatory guidance from KDHE.
- **Eligibility** - All eligible properties must contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source. Properties that are not eligible to participate in the VCPRP include: 1) properties listed or proposed for listing on the federal National Priorities List (NPL); 2) properties that are currently subject to existing environmental enforcement action, order, or agreement with local, state, or federal governmental agencies; 3) properties which have, or should have, a permit pursuant to the Resource Conservation and Recovery Act (RCRA) containing a corrective action component; 4) properties contaminated by oil and gas activities regulated by the Kansas Corporation Commission; and 5) properties that present immediate and significant risk to human health and the environment, including public and private drinking water supplies.
- **Activities** – As of December 31, 2006, 429 applications have been received since program establishment. A total of 362 properties have been investigated and 147 properties are currently in the cleanup stage. To date, KDHE has issued a total of 137 “No Further Action” letters to applicants.
- **Public Participation** - Notice is required when a cleanup plan has been accepted by KDHE. Notice must specify the comment period, which is a minimum of 15 days. In addition, the cleanup plan must be made available by KDHE to the public upon request. Following the 15-day public comment period, a public information meeting may be held by KDHE if the comments warrant a meeting, or the voluntary party requests a meeting.
- **Benefits** – Voluntary parties performing cleanup of contaminated properties that meet the criteria in the law (low to medium priority sites with minimal risk) can receive a No Further Action determination from KDHE to provide some protection from potential liabilities. Adjacent property owners who did not contribute to the contamination may also receive protection from KDHE through such determinations. These determinations provide assurance that the remediated properties will not become the subject of future KDHE enforcement action.
- **Other Facts** – In March 2001 KDHE entered into a Memorandum of Agreement (MOA) with the United States Environmental Protection Agency (EPA) to provide voluntary parties with assurance of release from future federal liability at their property as long as approved voluntary action is completed.

- **Environmental Use Control Program**

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**Description:**

- **Authority** – Program enacted in July 2003 (Kansas Statutes Annotated 65-1,221 through 65-1,235). Regulations adopted April 7, 2006 (Kansas Administrative Regulations 28-73-1 through 28-73-7).
- **Funding** – As allowed by the statute, fees are paid to the program for inspecting, administering and tracking the Environmental Use Control (EUC) for the property. The amount of funding required, as determined by KDHE, is based upon the property size, contaminant mobility/toxicity,

maintenance requirements, and inspection frequency. After approval of the application, KDHE will either request a one-time, not-to-exceed \$10,000 payment, or a long-term care agreement will be negotiated to provide the necessary funding.

- **Purpose** – The purpose of the EUC program is to provide a voluntary mechanism to assist existing state cleanup or remedial programs in addressing environmental contamination in a cost-effective manner that is protective of human health and the environment.
- **Eligibility** – To be eligible to receive an EUC, the property must be active (or has been active) in a KDHE program with oversight authority such as the Voluntary Cleanup and Property Redevelopment Program or the State Cooperative Program. While EUCs can be approved for an eligible property at any point during the investigative or remedial process, they must be applied as part of the overall approved cleanup plan. EUCs cannot be used in lieu of evaluating active remedial alternatives or used as a substitute for remedial actions that are otherwise technically and economically practicable.
- **Activities** – As of December 31, 2006, 43 applications have been received since program establishment. To date, the respective property owners have formally established EUCs at 30 sites. KDHE anticipates a continued increase in EUC applications in 2007 as awareness of program benefit and utility increases.
- **Public Participation** – Other than stakeholder committee involvement during drafting of the EUC legislation and the required 60-day public comment period/public hearing during regulation development, there is no other external public participation element for the EUC program.
- **Benefits** – Anticipated long-term benefits from the EUC program include: increased protection of human health and the environment through tracking and enforcement of land use restrictions; increased selection of more affordable remedies based on future land use, redevelopment and beneficial reuse of previously contaminated property for industrial, and commercial use; and establishment or restoration of economic vitality in Kansas communities. The benefits of the EUC program will be realized by a wide spectrum of parties including the public, landowners, potential purchasers, and local government entities.
- **Other Facts** – EUCs are a legal means of restricting or prohibiting property use to prevent or reduce human exposure to residual environmental contamination. Some examples of EUCs include, but are not limited to: preventing disturbance of soil covers; prohibiting drilling of water wells on the property; restricting excavation activities on a property with required advance notification; restricting use of a property to only nonresidential use; and/or restricting access to the property. EUCs run with the property and are binding on all subsequent owners, lessees and other users of the property. Once applied, EUCs remain attached to the property unless legally rescinded by KDHE.

- **Brownfields Program**

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**Description:**

- **Authority** – Federal Law 107-118 (H.R. 2869) Small Business Liability Relief and Brownfields Revitalization Act.

- **Funding** – Funding for KDHE’s Brownfields program is obtained from an EPA grant which is renewed annually. EPA Section 104(k) competitive assessment grants are also available to inventory, characterize, assess, or remediate eligible brownfields sites.
- **Purpose** – Brownfields are properties in which the expansion, redevelopment, or reuse of may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Environmental assessments are conducted on idle, abandoned, and/or underused properties. Once the environmental status of the property is determined, action can be taken to redevelop the property or remediate the site.
- **Eligibility** - Entities eligible to receive EPA and KDHE Brownfields funding and services include state and local governments, land clearance authorities, regional councils, redevelopment agencies, tribal organizations, and other “quasi-governmental entities.”
- **Activities** – Phase I and Phase II environmental assessments are conducted free of charge to the applicant. The assessments are consistent with the federal due diligence, or all appropriate inquiry, requirements necessary to protect prospective purchasers from environmental liability. In 2005 and 2006, a total of 181 Phase I and 25 Phase II assessments were conducted.
- **Public Participation** – Community outreach, including public meetings is conducted to inform the general public of brownfields assessments conducted under 104 (c) assessment grants. Outreach is necessary to build public confidence in government programs and promote access to properties for assessment.
- **Benefits** – Brownfield properties often provide considerable redevelopment potential because of attractive locations and existing infrastructure. Cleanup and reuse of brownfields reduces health risks and urban sprawl, improves public perception, and creates jobs and tax revenue.
- **Other Facts** – KDHE has been awarded a \$1,000,000 grant to create the Brownfields Cleanup Revolving Loan and Grant Fund (BCRLGF) program to cleanup brownfields properties that are publicly owned. The purpose of the BCRLGF is to facilitate the reuse and/or redevelopment of contaminated brownfields properties by making low interest loans and grants available for financing environmental cleanups.

- **State Cooperative Program**

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**Description:**

- **Authority** – The State Cooperative Program was developed by the Bureau of Environmental Remediation/Remedial Section in 1990/1991 based on K.S.A. 65-3452 et. seq.
- **Funding** – Program activities are generally funded through cost recovery billing to Potentially Responsible Parties participating in either consent agreements or subject to unilateral administrative orders. KDHE’s oversight costs include the costs of labor associated with review of documents, studies and test results, collection of split samples, laboratory analysis, and other costs. KDHE retains outside experts for specialized tasks such as preparing site-specific risk assessments; those costs are also recouped from Potentially Responsible Parties. Federal funding for program development supplements the program and provide staff training.

- **Purpose** – The State Cooperative Program was developed to investigate environmental contamination, identify human health and environmental risks, evaluate potential remedial actions, and to implement and monitor selected remedies. The program is structured similar to the federal National Contingency Plan (NCP) Superfund program, and has served as an alternate enforcement authority for both state-lead Superfund sites and a subset of Resource Conservation and Recovery Act Corrective Action sites in Kansas.
- **Eligibility** – The State Cooperative Program complements the Voluntary Cleanup and Property Redevelopment Program by addressing properties that present immediate and significant risk to human health and the environment, including public and private drinking water supplies, and are therefore statutorily precluded from participation in the Voluntary Program. The State Cooperative Program also serves as the general enforcement venue for sites with Potentially Responsible Parties that decline to participate in the Voluntary and other available programs. Properties contaminated by oil and gas activities regulated by the Kansas Corporation Commission are not eligible for participation in the State Cooperative Program.
- **Activities** – The SCP currently manages 234 sites, many of which are considered high priority (National Priorities List-Caliber) type-sites. Over 141 sites have been cleaned up and resolved in this program. In addition, State Cooperative Program participates in many of the negotiation and enforcement activities that lead to participation in other programs by Potentially Responsible Parties.
- **Public Participation** – The program encourages public participation throughout the process, including public input during the remedy selection process. The level of public participation varies with the controversy and interest of the affected community; however, at a minimum, the program is statutorily required to solicit public review and comment of any proposed final cleanup for a contaminated site. Public notices and press releases are issued to announce the availability of the public record and draft decision during the public comment period, and informal and/or formal public meetings are held as appropriate based on community interest. For some more complex and controversial sites, community relations plans are developed, interviews with community stakeholders to identify local issues and concerns may be conducted, and public meetings may be held at other junctures throughout investigation and cleanup phases of the project. Public relations strategies are developed for each site at the outset, and modified as necessary.
- **Benefits** – The primary benefits are conferred to the public through the cleanup and restoration of waters and soils of the state. Participating parties in the State Cooperative Program are generally protected from the potentially more costly and time-consuming prospect of working with the United States Environmental Protection Agency. In March 2001 KDHE entered into a Memorandum of Agreement (MOA) with the United States Environmental Protection Agency (EPA) to provide program participants with assurance of release from future federal liability at their property as long as approved cleanup action is completed.

- **Site Assessment Program**

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**Description:**

- **Authority** – Federal Comprehensive Environmental Response, Compensation, and Liabilities Act (CERCLA, 42 USCA § 9601 *et. seq.*) authorizes states to enter into cooperative agreements with the U.S. Environmental Protection Agency to conduct assessments of sites potentially impacted by hazardous substances, pollutants, or contaminants. Regulations for the program are included in the

National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300. KDHE has been involved in the Site Assessment program of CERCLA since 1987.

- **Funding** – EPA provides funding through the Multi-Site Cooperative Agreement portion of the CERCLA (“Superfund”) Kansas Combined Grant.
- **Purpose** – To assess sites with actual or potential releases or threat of release of hazardous substances, pollutants, or contaminants to the environment and citizens of Kansas.
- **Eligibility** – Any site at which a release or threat of release of hazardous substances, pollutants, or contaminants has occurred, or is occurring, is eligible.
- **Activities** – 81 site assessment projects were completed from July 1, 2005, to June 30, 2006. Over 600 site assessment projects have been completed over the last ten years of the program.
- **Public Participation** – Public participation may be initiated for sites that are more complex, such as those involving multiple residential properties, or sites potentially being listed on the National Priorities List (NPL). Public participation generally consists of a technical availability session to inform those interested of the site assessment activities.
- **Benefits** – Efficient and timely assessment of any site with a potential release or threat of release of hazardous substances, pollutants, or contaminants benefits all citizens of Kansas as well as the environment by determining if these releases or threats of release are significant impacts. The Site Assessment Program also allows for a prioritization of site risks identified to make more efficient use of resources for the cleanup and response phases. The Site Assessment Program also serves to assist in transferring sites to Kansas cleanup programs that can be more efficient in the cleanup and response phases.
- **Other Facts** – In 1996 KDHE was one of the first states to implement a pilot project to streamline the Site Assessment process; this has allowed for the assessment of more sites as well as fewer sites needing to be addressed through Federal-lead EPA authority. The Site Assessment Program has also conducted assessments at sites with impacted public or private water systems, residential yards impacted with hazardous substances, and other immediate threats that have initiated rapid response actions.

- **State Water Plan Program**

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**Description:**

- **Authority** – The State Water Plan Contamination Remediation Program (SWPCRP) is funded annually by the State Water Plan, i.e., the State Water Resources Planning Act (K.S.A. 82a-901 et seq.). The program is based on the “Water Pollution Remediation” policy which “requires the State to initiate remedial procedures when a responsible party is unknown or cannot or will not undertake necessary action”.
- **Funding** – The SWPCRP is funded annually from the State Water Plan.
- **Purpose** – The SWPCRP evaluates, monitors, and cleans up contaminated ground water or surface water sites and contamination source areas where the responsible party is not known, or is unable or unwilling to undertake the necessary action. The majority of sites in the program are being

addressed in response to ground water impacts which have affected public or private drinking water wells.

- **Eligibility** – The program is based on the “Water Pollution Remediation” policy, which requires the State to initiate remedial procedures when a responsible party is unknown or cannot or will not undertake necessary action. Any person determined responsible is still responsible for repayment of the costs of the clean-up work. Searches and investigations aimed at identifying potential responsible parties are conducted at each site.
- **Activities** – Currently there are 92 sites in the program. Fourteen of the sites are in some phase of remediation or are waiting funding for these activities. Sites in which remediation is not needed are monitored either annually or semi-annually. There are 32 sites in long term monitoring. Forty-two sites are currently being investigated.
- **Public Participation** – SWPCRP site files are open for inspection to the general public.
- **Benefits** – A major goal of the program is to assist municipalities and private residences in providing an alternate drinking water supply when the supply has been contaminated or is threatened by contamination from an orphan site.
- **Other Facts** – The SWPCRP is assessing over 20 former refineries, manufactured gas plants, and lead and zinc smelters throughout Kansas. Most of these facilities have been out of operation for many years and were identified through historical reviews and reconnaissance activities. Viable responsible parties are not present and the sites are being evaluated in the SWPCRP.